

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JAMES L. HOLLINGHEAD and
MARK SIMPSON,
Plaintiffs**

V.

**CITY OF YORK, PENNSYLVANIA,
YORK SEWER AUTHORITY, and
MONACACY VALLEY ELECTRIC, INC.,
Defendants**

CIVIL ACTION NO. 1:12-CV-260

(Judge Conner)

ORDER

AND NOW, this 12th day of December, 2012, upon consideration of the Report and Recommendation of United States Magistrate Judge Martin C. Carlson (Doc. 27), recommending (1) that Defendant York Sewer Authority's motion to dismiss (Doc. 11) be denied, (2) that Defendant Monacacy Valley Electric, Inc.'s motion to dismiss (Doc. 10) be granted with respect to Counts I-II, without prejudice, (3) that Monacacy Valley Electric, Inc.'s motion to dismiss (Doc. 10) be granted with respect to Count V and denied with respect to Count VI; and (4) that Monacacy's motion for more definitive statement as to Count VI should be granted, and, following an independent review of the record, and noting that plaintiffs filed objections¹ to the report on November 21, 2012 (Doc. 30), and

¹ Where objections to a magistrate judge’s report and recommendation are filed, the court must perform a *de novo* review of the contested portions of the report. Supinski v. United Parcel Serv., Civ. A. No. 06-0793, 2009 WL 113796, at *3 (M.D. Pa. Jan. 16, 2009) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). “In this regard, Local Rule of Court 72.3 requires ‘written objections which . . . specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections.’” Id. (citing Shields v. Astrue, Civ. A. No. 07-417, 2008 WL 4186951, at *6 (M.D. Pa. Sept. 8, 2008)).

the court finding Judge Carlson's analysis to be thorough and well-reasoned, and the court finding plaintiffs' objections to be without merit and squarely addressed by Judge Carlson's report (Doc. 27), it is hereby ORDERED that:

1. The Report and Recommendation of Magistrate Judge Carlson (Doc. 27) are ADOPTED.
2. Defendant York Sewer Authority's Motion to Dismiss (Doc. 11) is DENIED.
3. Defendant Monacacy Valley Electric, Inc.'s Motion to Dismiss (Doc. 10), with respect to Counts I-II is GRANTED.
4. Defendant Monacacy Valley Electric, Inc.'s Motion to Dismiss (Doc. 10) is GRANTED with respect to Count V of plaintiffs' complaint and DENIED with respect to Count VI of plaintiffs' complaint.
5. Monocacy's motion for more definitive statement as to Count VI is GRANTED.
6. Plaintiffs are granted leave to file an amended complaint within twenty (20) days of the date of this order, which shall address the deficiencies set forth in Judge Carlson's Report and Recommendation. Failure to file an amended complaint within the specified time period will result in the matter proceeding on only the remaining counts of the original complaint.
7. The above-captioned case is REMANDED to Magistrate Judge Carlson for further proceedings.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge